IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.19800 OF 2006

Between:

S.P.Subramanian

..... PETITIONER

AND

The Deputy Transport Commissioner,
Chittoor.

....RESPONDENT

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.19800 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"… Hon'ble Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the concerned records and quash the Demand Notice of the respondent issued in Rc.No.20327/B1/2003, dt. 4-4-2006 and pass …"**

The petitioner is a registered owner of the vehicle bearing No.TN 36/Q 7777. It appears that for the said vehicle the petitioner had a permit, which is described in the affidavit filed in support of the writ petition, as an inter-state spare bus permit. For the period between 08.08.2003 to 12.08.2003 the petitioner claims to have obtained a special permit, the details of which may not be necessary for the present. On 09.08.2003 the vehicle was checked at Naraharipeta in Chittoor District by the Assistant Motor Vehicle Inspector and on an examination, he came to the conclusion that the vehicle was plying as a stage carriage, which is contrary to the terms of the permit obtained by the petitioner referred to earlier and therefore the vehicle was seized.

Challenging the seizure of the vehicle, the petitioner had earlier approached this Court by way of filing W.P.No.17354 of 2003, this Court by an

order dated 19.08.2003 disposed of the said writ petition directing the respondent therein to release the vehicle on condition of the petitioner depositing an amount of Rs.30,000/-, without prejudice to the authority of the respondents therein to take appropriate further action in accordance with law. Admittedly, the petitioner deposited the said amount of Rs.30,000/- and got released the vehicle. Subsequently, on 16.08.2003 the petitioner received a show-cause notice proposing to levy an additional tax for the above-mentioned irregularity committed by the petitioner. The petitioner filed his objections. After long lapse of almost three years, on 04.04.2006 the respondent issued proceedings titled as 'demand notice' which, in substance, is a final order pursuant to the enquiry consequent upon the seizure of the vehicle and also a demand notice. The respondent recorded a finding that the petitioner is guilty of mis-use of the vehicle as a stage carriage contrary to the terms of the permit issued in his favour, and therefore, found that the petitioner is liable to pay additional tax in terms of G.O.Ms.No.77, dated 01.06.2002 and hence demanded payment of Rs.1,69,500/- after giving credit to the amount of Rs.30,000/- deposited by the petitioner earlier. In substance, an additional tax of Rs.1,69,500/- was sought to be levied and collected hence the present writ petition.

Learned counsel for the petitioner submitted that the levy and collection of additional tax, lacks authority of law as G.O.Ms.No.77, dated 01.06.2002 was the only authority available to the respondent to levy and collect the tax, but the said G.O. was found illegal and unconstitutional by a Larger Bench of this Court in a case reported in L.ROYAL REDDY V/s. GOVERNMENT OF ANDHRA PRADESH[1] and therefore, the present impugned notice is illegal and without any authority of law.

On the other hand, learned Government Pleader – Satyanarayana Raju, appearing for the respondent, submitted that in view of the above-mentioned decision of this Court, the State of Andhra Pradesh promulgated Ordinance No.3 of 2006, dated 25th May, 2006 thereby purporting to remove the basis of the said judgment by supplying the necessary statutory authority for levying

and collection of the additional tax. Section-3 of the said Ordinance purports to insert, inter alia, Section 3-A into the A.P. Motor Vehicles Taxation Act, 1963 (for short 'the Act'). Section 3-A reads as follows:

> **"3-A (1) Notwithstanding anything contained in section 3, it shall be competent for the Government to provide for levying an additional tax in respect of a motor vehicle specified in one category or class notified under section 3, if misused or used not in accordance with the purpose for which the vehicle was registered, or the permit was granted, attracting higher rate of tax as a vehicle falling in another category or class :**
>
> **Provided that the additional tax so levied shall be a sum equal to the difference of amount between the tax already levied and collected and the tax which shall be leviable in respect of such vehicle falling in another category.**
>
> **(2) The registered owner or the person who is in possession or control of such vehicle misused or used not in accordance with the purpose for which the vehicle was registered or the permit was granted, shall pay the additional tax so levied under sub-section (1)."**

It is also brought to the notice of this Court by the learned Government Pleader that Section 3 of the Ordinance shall be deemed to have come into force with effect from 1st June, 2002 in view of such declaration contained under Section 1(2)(a) of the Ordinance. It is pertinent to mention here that the effective date is the date of the above-mentioned judgment of this Court. The learned Government Pleader, therefore, submitted that the proposed levy and collection of the additional tax is now supported by a valid Legislative sanction.

We do not propose to examine whether the newly introduced provision Section 3-A of the Act provides the necessary legal authority to levy the additional tax or not, for the purpose of disposal of the present writ petition. We propose to dispose of the present writ petition on a shorter ground that the impugned demand notice dated 04.04.2006, though by virtue of Section 3-A of the Ordinance is sought to be given retrospective effect, on the date on

which the impugned demand notice came to be passed, the Ordinance did not exist, inasmuch as it was promulgated on 25th May, 2006. The reliance on G.O.Ms.No.77, referred to earlier by the respondent is plainly illegal in view of the above-mentioned decision of this Court. The proposed levy and collection which was admittedly preceded by a show cause notice. It obviously could not make a reference to the amended law brought by virtue of ordinance thereby denying an opportunity to the petitioner to examine the applicability of the amended provision Section-3A of the Act.

In the circumstances, we are of the opinion that the impugned demand notice is illegal and unsustainable, and therefore, the same is quashed. However, the respondent is at liberty to proceed under the provisions of the above-mentioned Ordinance, if he is so advised.

The writ petition is accordingly allowed. There shall be no order as to costs.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

27TH SEPTEMBER, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
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WRIT PETITION No.19800 OF 2006
(Per Sri Justice J.Chelameswar)

27TH SEPTEMBER, 2006

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[1] **2004(2) ALD 225 (LB)**